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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Art Unit : 3744  
Examiner : Marc E. Norman  
Serial No. : 10/657,461  
Filed : September 8, 2003  
Inventor : DeLuca, Michael R.  
Title : PROGRAMMABLE THERMOSTAT  
: INCORPORATING AIR QUALITY  
: PROTECTION

Customer No. 035811

Docket No.: 1117-R-03

Confirmation No.: 9797

Dated: August 4, 2005

Mail Stop Amendment  
Commissioner for Patents  
P.O. Box 1450  
Alexandria, VA 22313-1450

Sir:

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Response

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Name of Applicant, Assignee, Applicant's Attorney  
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DLA Piper Rudnick Gray Cary US LLP  
Customer No. 35811

By: \_\_\_\_\_

Date: \_\_\_\_\_ 4 AUG 2005



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**RESPONSE**

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Sir:

This is submitted in response to the Official Action dated May 26, 2005.

The Applicant notes with appreciation the withdrawal of the rejection of Claims 1-3, 49, 52, 53, and 71 under 35 U.S.C. §102 over Heth and the rejection of Claims 4 and 5 under 35 U.S.C. §103 over Heth.

The Applicant acknowledges the new rejection of Claims 1-5, 49, 52, 53, and 71 under 35 U.S.C. §103 over the hypothetical combination of Roff with Keating. The Applicant respectfully submits that those Claims are patentable over the hypothetical combination for the reasons set forth in detail below.

The Applicant agrees that Keating discloses a thermostat program to control the temperature of a temperature modifying device to achieve a desired temperature. The Applicant notes with appreciation the Examiner's further detailed comments concerning the disclosure of Keating, particularly at column 4, lines 20-24. That text reads as follows:

It is yet another object of the invention to provide moisture control removal to the space with energy savings without the need of controlling a thermostat and without the knowledge of the HVAC system sensible and non-sensible heat removal capability.

The Applicant respectfully submits that Keating does not disclose that the air circulating system operates independently of the temperature modifying device to “prevent mold/mildew/allergens.”

The disclosure of Keating at column 4 means that the system removes humidity from the space, not the HVAC system itself irrespective of the need to achieve a desired temperature in the space. There is simply no disclosure at all concerning the prevention of mold/mildew/allergens in the system. The Applicant respectfully submits that it is well known in the art to provide moisture removal in the space, i.e., remove humidity, to enhance the livability of the interior space that is subject to the HVAC system. However, there is nothing on this record that teaches or suggests prevention of buildup and growth of allergens in the system.

Thus, the Applicant respectfully submits that one of ordinary skill in the art would have utterly no reason to look to Keating in an attempt to circulate air through the system at selected intervals sufficient to prevent buildup and growth of allergens within the system. There simply is no such disclosure.

This problem is compounded by the additional fact, as frankly acknowledged in the Official Action, that Keating does not disclose circulating the air at selected intervals. Roff is hypothetically combined with Keating to make up for this deficiency. However, Roff is directed to a completely different problem. In particular, Roff is directed to curing the problems of moisture entering the interiors of walls, floors, and ceilings which causes bacteria, molds, mildew, fungus, virus, and insects to grow and thrive within such walls, floors, and ceilings. Roff's system circulates fresh dry air into the spaces between the interior surfaces and exterior surfaces of the above mentioned walls,

ceilings, and floors. This absorbs the moisture that would otherwise promote the culturing of molds, mildew, fungi, viruses, bacteria, and insects. This can be done under the control of a moisture sensor or at defined intervals of time. However, that system is completely related to preventing growth of molds, mildew, fungi, viruses, bacteria, and insects within walls, floors, and ceilings. There is utterly no mention at all of the claimed prevention and buildup of growth of allergens within the system. The walls, ceilings, and floors of Roff are not “within the system” of Claims 1-5, 49, 52, 53, and 71 . The Applicant is not directing air through the walls, floors, and ceilings in an unfettered manner as does Roff. The air of the system of Claims 1-5, 49, 52, 53, and 71 is “within the system.”

As a consequence, Roff utterly fails to disclose, teach or suggest the prevention, buildup, and growth of allergens within the system. It is directed to a completely different function. Thus, one of ordinary skill in the art would have no incentive to look to Roff in attempting to circulate air through the system at selected intervals sufficient to prevent buildup and growth of allergens within the system. Therefore, combining Roff with Keating does nothing to cure the inherent deficiencies of Keating. In fact, the Applicant respectfully submits that both disclosures are completely devoid of any disclosure, teachings or suggestions to circulate air through the system at selected intervals sufficient to prevent buildup and growth of allergens within the system. Both of Roff and Keating are therefore non-enabling with respect to that specifically claimed aspect of Claims 1-5, 49, 52, 53, and 71. Withdrawal of the rejection is respectfully requested.

The Applicant acknowledges the rejection of Claims 6-11 and 54-56 under 35 U.S.C. §103 over the hypothetical combination of Toth with Heth. Heth is inapplicable for the reasons set forth above with respect to Claims 1-3, 49, 52, 53 and 71. The Applicant respectfully submits that Toth fails to provide teachings or suggestions, even if hypothetically combined with Heth, that would result in the invention as set forth in Claims 6-11 and 54-56.

Heth fails to disclose, teach or suggest operation of the air circulating system independently of the temperature modifying device such that air circulates through the system at selected intervals sufficient to prevent buildup and growth of allergens within the system. Hypothetically combining the disclosure of Toth with Heth would still fail to provide teachings or suggestions that would result in an apparatus or method that would operate the air circulating system independently of the temperature modifying device such that air circulates through the system at selected intervals sufficient to prevent buildup in growth of allergens within the system. Although the Applicant agrees that Toth discloses an air conditioning system with filtration information entered and displayed, that disclosure, even when combined with Heth, fails to provide for operation of the air circulating system independently of the temperature modifying device such that air circulates through the system at selected intervals sufficient to prevent buildup and growth of allergens within the system.

In other words, the Heth device might very well have the capability to input and display filter information. However, it still utterly fails to disclose, teach or suggest that the air circulates through the system at selected intervals sufficient to prevent the buildup and growth of allergens within the system. Heth simply has no disclosure whatsoever concerning prevention of buildup and growth of allergens within the system. Heth's system intermittently circulates room air passed a sensing element such that the sensing element has an opportunity to sense the temperature of air that is more accurately reflective of the actually room temperature. There is utterly no disclosure concerning preventing buildup and growth of allergens within the system.

Toth is similarly completely devoid of disclosure, teachings, or suggestions concerning preventing buildup and growth of allergens within the system as specifically recited in Claims 6-11 and 54-56. As a consequence, the Applicant respectfully submits that both of Heth and Toth are

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non-enabling with respect to the Applicant's specifically claimed language wherein air circulates through the system at selected intervals sufficient to prevent the buildup and growth of allergens within the system. The Applicant accordingly respectfully requests withdrawal of the rejection of Claims 6-11 and 54-56 based on the hypothetical combination of Toth with Heth.

The Applicant acknowledges the rejections of Claims 12-17, 57, 58 and 66 under 35 §U.S.C. 103 over the hypothetical combination of Yoho, Toth, and Roff with Keating. The Applicant has already set forth the compelling reasons why one of ordinary skill in the art would not attempt to hypothetically combine Roth with Keating and, in any event, that the hypothetical combination is non-enabling. As noted above, Toth is also non-enabling with respect to disclosure concerning preventing buildup and growth of allergens within the system. Therefore, hypothetically combining Toth with Roff and Keating would still fail to teach suggest the subject matter of Claims 12-17, 57, 58, and 66.

The Applicant respectfully submits that Yoho is even further a field in as much as Yoho discloses an air ventilation system suitable for a stove/grill operation. In any event, there is utterly no disclosure in Yoho concerning preventing buildup and growth of allergens within the system. Therefore, the Applicant respectfully submits that Yoho is also non-enabling. Accordingly, even if one of ordinary skill in the art were to hypothetically combine Yoho, Toth and Roff with Keating, the resulting apparatus would still utterly fail to disclose, teach or suggest circulating the air through the system at selected intervals sufficient to prevent buildup and growth of allergens within the system. Withdrawal of the rejection is respectfully requested.

In light of the foregoing, the Applicant respectfully submits that the entire application is now in condition for allowance, which is respectfully requested.

Respectfully submitted,



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